IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6530 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PALJIBHAI MANJIBHAI HARIJAN

Versus

COLLECTOR

Appearance:

MR MB PARIKH for the Petitioner.

Ms.Sonalben D. Vyas, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the legality and validity of the orders passed by the revenue authority at Annexures 'F' and 'G", respectively.

2. The petitioner was granted certain land in Chalala Town of Dhari Taluka, admeasuring 258-36-42 sq. metres at the rate of Rs.6/- per sq. metre. The said land was allotted to the petitioner for the purpose of his tyre tube retreading and vulcanizing business. The land was granted to the petitioner in April, 1978 as impartible land. The petitioner, thereafter, requested the authority that since his tyre vulcanizing business is not going well, he may be permitted to construct some additional floor for the purpose of giving the upper floor of the guest house by way of lease. However, the authority rejected the said prayer and informed the petitioner to hand over the said land back to the State Government. The said order was challenged by the petitioner by way of revision application before the Secretary (Appeals). That revision was dismissed by the Secretary. The Secretary, therafter, asked the authorities to take appropriate proceedings for breach of the condition for which the land was granted. Thereafter, the Collector initiated proceedings against the petitioner as, according to the authority, the petitioner has committed breach of condition and, thereafter, the Collector, Amreli, by his order dated 2.5.1992, came to the conclusion that the petitioner has not carried out any construction, which he was supposed to do as per the original order, by which he was granted the land in question. By making spot inspection through the Officers, it was found that the petitioner had not carried out any construction; and except putting up construction upto plinth level, no other construction was found to have been carried out by the petitioner. The Collector came to the conclusion that the say of the petitioner about non-completion of construction due to his financial difficulty, cannot be accepted. Under the aforesaid circumstances, the Collector came to the conclusion that the petitioner has committed breach of the condition, being Condition No.9, at the time of allotting the land to him by not completing the construction and starting his business (industry) within the stipulated time. Accordingly, it was ordered that the land in question be confiscated to the State Government.

3. The said order of the Collector was challenged by the petitioner before the Secretary. The Secretary, by his order dated 30th July, 1992, came to the conclusion that the petitioner has not started his business after making construction and that there is nothing on record to show that he has continued his business, for which the land was granted to him. the Secretary found that the petitioner has never utilised the aforesaid land for

vulcanizing or retreading business. Under the said circumstances, the revision application of the petitioner was dismissed by the Principal Secretary, Revenue Department, State of Gujarat. The said order is impugned in the present petition.

4. At the time of admitting the petition, this Court has already granted interim relief in favour of the petitioner. Earlier, this matter came up before the learned single Judge for hearing on 2.3.2001 and on 2.3.2001, this Court (Coram : C.K. Buch, J.) passed the following order :-

> " ... ...
> 4. After going through both the orders under challenge and averments made in the petition, I feel that the jurisdiction vested with this Court under Article 227 of the Constitution of India needs to be exercised in favour of the petitioner. This matter came up for admission hearing on 18.9.1992 and at that time the petitioner was present before the Court. On that day, this Court (Coram : R.A. Mehta, J.) passed the following order :-
>
> " The petitioner is present along with his advocate and states that the petitioner will make full use of the allotted land by making use for the purpose for which it was allotted and he would require six months time to put up necessary construction to house the machineries. Notice returnable on 19.10.1992. Ad-interim stay of the impugned order. D.S. "
>
> Thereafter, while passing the order on 22.3.1994, this Court (Coram : R.K. Abichandani, J.) observed that in compliance to the earlier order dated 18.9.1992, the petitioner has already put up necessary construction to house the machineries and is carrying on the work for which the land was given. In the context of aforesaid observation, the Court issued Rule and interim relief of stay of impugned order granted earlier was ordered to continue till the disposal of the petition.

> 5. On careful consideration of both the impugned orders and the documents attached to the petition including the tender notice issued by ST Corporation to the petitioner, copy of certificate issued by Manager, State Bank of Saurashtra, Chalala Branch dated 2.6.1992 and the fact that till today, State of Gujarat has not filed any affidavit-in-reply nor has produced any documents to resist this petition, I am inclined to allow this petition.
>
> 6. At this juncture, ld. AGP Mr. Patel submits that in view of the remarks available to the office of the Govt. Pleader, it is necessary that department should instruct him properly as to whether the petitioner has complied with the order passed by this Court on not. Today, ld. AGP has produced one certificate issued by Chalala Nagar Panchayat dated 15.4.1993 and has submitted that he needs instructions from the State of Gujarat whether the State of Gujarat wants to resist the petition on merits or whether petitioner may be permitted to continue with the possession and enjoyment of the land. He has further submitted that to get specific instructions on these aspects, he may be given some time so that this Court may not have to pass the order on merits.
> ... ..."

5. Today, when the matter is called out, learned AGP submitted that she has not received any instructions in the matter.

6. The petitioner has relied upon the certificate granted by Chalala Nagar Panchayat dated 2.6.1992, wherein the Panchayat has certified that the petitioner is doing the business of tyre. The petitioner has annexed the same as Annexure 'C', for justifying his say that he is doing tyre retreading business. The petitioner has also annexed certificate of the Chalala Nagar Panchayat dated 15.4.1993, certifying that the petitioner has made construction and the said fact was ascertained after making spot enquiry. Considering the aforesaid piece of evidence and considering the fact that though this Court had given time to the learned AGP to

ascertain whether construction is complete or not, till today, no information is available with the AGP, in my view, now, it is not necessary to wait further to enable the AGP to get instructions in the matter. Considering the financial condition of the petitioner, he was allotted a piece of land for doing vulcanizing business and considering the fact that, now, the petitioner has already completed the construction as per the documentary evidence on record and as per the submission of Mr.Parikh, he is already doing the business, for which the land was granted to him, in my view, it is not a fit case in which the Government should have taken a very strict view of the matter by cancelling the grant given to the petitioner as back as in the year 1992. Under the circumstances, considering the subsequent development, which has occurred after the filing of the petition, such as completing the construction and considering the fact that the petitioner is already doing business for which the land was granted to him initially, the order of the Collector as well as the Secretary are required to be set aside. The petitioner may be permitted to carry on business as per the condition in the original grant, on which the land was granted to him. In case the petitioner is not in a position to continue the said business because of his not getting proper work of vulcanizing work and tyre retreading work, it will be open for the petitioner to apply to the authority for change of user and if it is permissible to allow such change in the original order by even charging necessary premium, etc., the revenue authorities may consider the same sympathetically.

In view of what is stated above, the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

10th October, 2002 (P.B. Majmudar, J.)

****

(apj)